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Attorneys for Yellowstone County *et al*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

ESTATE OF LOREN SIMPSON <i>et al</i> ,)	
)	Cause No. CV 15-99-BLG-SPW
Plaintiffs,)	
)	
vs.)	ROBINSON AND
)	RUDOLPH'S MOTION FOR
YELLOWSTONE COUNTY <i>et al</i> ,)	SUMMARY JUDGMENT
)	
Defendants.)	
_____)	

Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, Jason Robinson and Christopher Rudolph move the Court for summary judgment. There is no genuine issue of material fact and they are entitled to judgment as a matter of law. They have immunity from the claims. They have qualified immunity from the federal claims, the Section 1983 claims. They have statutory immunity from the state claims; the negligence, survivorship, wrongful death and assault claims.

Robinson and Rudolph have qualified immunity from the federal claims, the Section 1983 claims. It was reasonable for them to believe under the circumstances that the deadly force they used against Loren Simpson would not have violated Simpson's right against excessive use of force under the Fourth Amendment of the United States Constitution. When Simpson drove his vehicle in the direction of Robinson, it was reasonable for Robinson and Rudolph to believe that Simpson posed a threat of death or seriously bodily injury to Robinson that allowed them to use deadly force against Simpson.

Pursuant to Section 2-9-305(5) of the Montana Code Annotated, Robinson and Rudolph have statutory immunity from the state claims; the negligence, survivorship, wrongful death and assault claims. Yellowstone County has agreed to defend and indemnify them. When they shot and killed Simpson, they were acting within the course and scope of their employment with the County.

Counsel for Robinson and Rudolph has contacted counsel for the estate of Simpson about the motion. Counsel for the estate of Simpson opposes the motion. Robinson and Rudolph have filed a brief, a statement of undisputed facts, the affidavit of Robinson, the affidavit of Rudolph and the affidavit of Gillen in support of the motion.

Dated this 29th day of August 2016.

/s/ Kevin Gillen

Kevin Gillen

Deputy Yellowstone County Attorney

Certificate of Service

I certify that on the date below I served a copy of the attached Robinson and Rudolph's Motion for Summary Judgment on the following people by the following means:

1, 2 CM/ECF
☐ Hand Delivery
☐ Mail
☐ Overnight Delivery Service
☐ Fax
☐ E-mail

1. Clerk, U.S. District Court
2. Datsopoulos, MacDonald & Lind, P.C.
Attn: Nathan G. Wagner
201 West Main Street, Suite 201
Missoula, Montana 59802
nwagner@dmlaw.com
Attorney for the Estate of Loren Benjamin Simpson et al

Dated this 29th day of August 2016.

/s/ Kevin Gillen
Kevin Gillen
Deputy Yellowstone County Attorney